INDEX

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Statute involved	3
Statement	3
Reasons for granting the writ	7
Conclusion	21
Appendix	22

CITATIONS

Cases:

J. I. Case Co. v. *National Labor Relations Board,* 321 U. S. 332	19
Club Troika, Inc., 2 NLRB 90	15
Cyril de Cordova & Bro., 91 NLRB, No. 187, 26 LRRM 1628	10, 14
Electrical Workers v. *National Labor Relations Board,* 341 U. S. 694	8
Elgin, J. & E. Ry. v. *Burley,* 325 U. S. 711	9, 21
Fort Wayne Corrugated Paper Co. v. *National Labor Relations Board,* 111 F. 2d 869	16, 17
Gardner-Denver Co., 58 NLRB 81	8, 10, 15
Joanna Cotton Mills Co. v. *National Labor Relations Board,* 176 F. 2d 749	18
National Labor Relations Board v. *J. G. Boswell Co.,* 136 F. 2d 585	15, 16
National Labor Relations Board v. Clausen, 188 F. 2d 439	18
National Labor Relations Board v. *Denver Bldg. Trades Council,* 341 U. S. 675	8, 10
National Labor Relations Board v. *Draper Corp.,* 145 F. 2d 199	19
National Labor Relations Board v. *International Rice Milling Co.,* 341 U. S. 665	7, 12
National Labor Relations Board v. *Montag Bros.,* 140 F. 2d 730, enforcing 51 NLRB 366	10, 15, 16
National Labor Relations Board v. *Peter Cailler Kohler Co.,* 130 F. 2d 503	13
National Labor Relations Board v. *Schwartz,* 146 F. 2d 773	17
National Labor Relations Board v. *Service Trade Chauffeurs* (C.A. 2), decided July 31, 1951	11, 20
New York Telephone Co., 89 NLRB 383	10, 15

Cases—Continued

	Page
Pinaud, Inc., 51 NLRB 235	10, 15
Printing Specialties & Paper Converters Union v. *LeBaron*, 171 F. 2d 331, petition for certiorari dismissed, 336 U. S. 949	11
Rapid Roller Co. v. *National Labor Relations Board*, 126 F. 2d 452	17
Rockaway News Supply Co., 95 NLRB, No. 50, 28 LRRM 1314	8, 10, 12, 14
Rock Hill Printing & Finishing Co., 29 NLRB 673, enforced, 131 F. 2d 171	10, 15
Surpass Leather Co., 21 NLRB 1258	15

Statutes:

National Labor Relations Act, 1935 (49 Stat. 449, 29 U.S.C., 151, *et seq.*):	
Section 7	2, 7, 8, 11, 18, 22
Section 8 (1)	22
Section 8 (3)	22
Section 9 (a)	18, 22
National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Supp. III, 141, *et seq.*)	3
Section 7	12
Section 8 (b) (4)	12

Miscellaneous:

Barbash, *Labor Unions In Action* (1948), p. 129	11
H. Conf. Rep. No. 510, 80th Cong., 1st Sess., p. 38	12

In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 249

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

ILLINOIS BELL TELEPHONE COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

The Solicitor General, on behalf of the National Labor Relations Board, prays that a writ of certiorari issue to review the judgment of the Court of Appeals for the Seventh Circuit entered on May 21, 1951 (R. A. 51),* denying enforcement of an order issued by the Board against the Illinois Bell Telephone Company (B. A. 15-18).

OPINIONS BELOW

The opinion of the Court of Appeals (R. A. 44-50) is reported at 189 F. 2d 124. The findings of fact, conclusions of law, and order of the National

* For purposes of this petition, the printed record before this Court consists of two separately paginated volumes: the appendix to respondent's brief in the court below, herein designated "R.A.," and the appendix to the Board's brief in

Labor Relations Board (B. A. 6-18), are reported at 88 NLRB 1171.

JURISDICTION

The judgment of the Court of Appeals was entered on May 21, 1951 (R. A. 51). The jurisdiction of this Court is invoked under 28 U. S. C. 1254 and Section 10 (e) of the National Labor Relations Act, as amended.

QUESTIONS PRESENTED

1. Whether Section 7 of the Act, which provides that employees "shall have the right * * * to assist labor organizations * * * and to engage in concerted activities, for the purpose of * * * mutual aid or protection," protects employees against discrimination for refusing as individuals to cross a picket line.

2. Whether, assuming such protection exists, it is lost where the motive of the employees in refusing to cross a picket line is not to seek benefit from the employer for themselves but solely to aid the pickets.

3. Whether such protection is lost where the employees are represented by a collective bargaining agent which is not participating in the strike and has not authorized or directed, but has also not forbidden, them to refrain from crossing the picket line.[1]

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the court below, designated "B.A." The proceedings in the court below are bound at, and paginated continuously from, the end of the appendix to respondent's brief.

[1] If this petition is granted, we propose to argue the further question whether the court below erred in concluding (R. A. 50) that the Board's order was too broad.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act (49 Stat. 449, 29 U. S. C., 151, *et seq.*), are set forth in the Appendix, *infra,* pp. 22-23.[2]

STATEMENT

Upon the usual proceedings under Section 10 of the Act, the Board, on March 16, 1950, issued its findings of fact, conclusions of law, and order (B. A. 6-16). The facts, which are not in dispute, may be summarized as follows:

Respondent's enterprise is organized and operated in two geographical divisions—one covering substantially the City of Chicago, Illinois, the other the remainder of the State (B. A. 24; 92-93).[3] During the period involved in this case, respondent's employees in the Chicago area were represented for the purpose of collective bargaining by the Chicago Telephone Traffic Union (CTTU); the collective bargaining representative for the Illinois area was the Illinois Telephone Traffic Union (ITTU) (B. A. 25; 60, 93).

On April 7, 1947, ITTU began an economic strike against respondent and established picket lines at

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[2] It is undisputed that, since the events involved in this case occurred before the effective date of the amendments enacted by the Labor Management Relations Act, 1947 (61 Stat. 136, 29 U. S. C., Supp. III, 141, *et seq.*), the provisions of the original Act apply. However, the amendments effect no presently material changes in these provisions.

[3] Where a semicolon appears in a series of record references in this statement, references preceding the semicolon are to the Board's findings; succeeding references are to the supporting evidence.

respondent's installations in the Chicago area as well as in the rest of the State (B. A. 25; 56-58). CTTU, taking no part in the strike, met with respondent during the period of the strike (which lasted through May 8, 1947) and later, on May 15, 1947, signed a new contract covering the employees in the Chicago area (B. A. 25; 93, 178).[4]

While their bargaining representative, CTTU, did not participate in the strike, eight telephone "supervisors"[5] employed in the Chicago area refused to cross the ITTU picket lines and accordingly failed to report for work (B. A. 25-26; 62, 67, 74-75, 78, 81-82, 84, 88). Seven of these employees were members of ITTU, the striking union; the eighth later joined ITTU (B. A. 26; 65, 67, 71, 74, 78, 81, 84, 88).[6]

In letters sent on April 11 and 12, 1947, respondent informed these employees that they were being demoted from supervisors to operators for thus absenting themselves from work and that their continued failure to report after receiving these letters would result in their suspension (B. A. 26;

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[4] An agreement between respondent and CTTU dated July 25, 1946 had been scheduled to terminate on March 29, 1947. On March 25 and April 25, 1947, the parties agreed to extensions to April 28 and June 2, 1947, respectively (B. A. 25; 173, 174, 176).

[5] Because the alleged unfair labor practices occurred before the 1947 amendments, the Board found it unnecessary to determine whether the eight employees were "supervisors" within Section 2 (3) of the amended Act (B. A. 8, n. 7). The court below likewise found this question immaterial (R. A. 44, n. 1).

[6] Only three of the eight were members of CTTU, the collective bargaining representative of the division in which they were employed.

88-89, 94, 133-138). The eight employees continued, nevertheless, to refuse to cross the picket lines and stayed away from their jobs until the pickets had left the buildings in which they worked (B. A. 26; 59).

After the strike had ended and the picket lines had been removed, the employees reported for work and were assigned the positions and duties of telephone operators to which their demotions had been announced in respondent's letters of April 11 and 12, 1947 (B. A. 26-27; 57, 64, 69, 72, 75-76, 80, 84-85).[7] Their salaries as operators were in each case lower than the salaries they had received as supervisors (B. A. 27; 64-65, 69-70, 73, 76, 80, 85-86, 90).

Noting the undisputed facts that the ITTU strike had been legal and that the picketing had been conducted peacefully (B. A. 9, n. 8, 27, 29), the Board found that, by demoting the eight employees because of their refusal to cross the picket lines, respondent had violated Section 8 (1) and 8 (3) of the Act (B. A. 8). The Board rejected respondent's contention that, in refusing to cross the picket line, the employees had derogated from the authority of their non-striking bargaining agent (CTTU) and were therefore not entitled to the protection of the Act. Their representation by a union, the Board held, did not preclude them from

[7] All except one of the eight were back at work by May 9, 1947, the day following the termination of the ITTU strike. The remaining employee, who had become ill during the strike, returned to work early in September following her recovery and convalescence (B. A. 26-27).

asserting, "by any form of concerted activity not in itself illegal, protected interests outside of and unconnected with the bargaining process or its results" (B. A. 11-12).[8]

The Board's order (B. A. 15-16) requires respondent to cease and desist (1) from discouraging membership in Illinois Traffic Division 14, CWA (successor to ITTU), or any other labor organization of its employees by discriminating in their employment, and (2) from interfering with, restraining, or coercing its employees, in any like or related manner, in the exercise of their rights guaranteed by Section 7 of the Act. Affirmatively, the order requires respondent to offer the eight employees reinstatement to their former positions as telephone supervisors, to make them whole for any loss in wages, pension rights, or sick benefits they may have suffered as a result of the discrimination against them, and to post appropriate notices.

On the Board's petition for enforcement of its order, the court below decided that the "crucial issue * * * is whether the eight employees were protected by § 7 of the Act" (R. A. 46-47). Holding that they were not, the court denied enforcement. First, the court held, since the employees had decided individually and not in a group to refrain from crossing the picket line, their activities were

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[8] The Board also rejected respondent's argument that the extensions of the agreement between CTTU and respondent (see note 4, *supra*), amounted to a no-strike pledge by the union and that the refusals to cross the picket line must therefore be viewed as an illegal strike (B. A. 9-11).

not of the "concerted" type guaranteed in Section 7 (R. A. 47-48). Second, assuming *arguendo,* and contrary to its stated view, that the activities were "concerted" the court held that they could not be deemed for "mutual aid or protection" since the employees refusing to cross the picket lines neither sought nor were entitled to seek benefits from the respondent for themselves. Finally, reasoning that it was the exclusive concern of their bargaining agent to demand benefits from the employer on their behalf, the court concluded that the refusal of the eight employees to cross the picket lines derogated from the bargaining agent's authority and was therefore unprotected by Section 7 (R. A. 48-50).

REASONS FOR GRANTING THE WRIT

Overlooking the Act's express guarantee to employees of the right to "assist" labor organizations and severely truncating the right of employees to engage in other "concerted activities" for "other mutual aid or protection" (Section 7), the decision below subjects to employer reprisal employees who, in traditional manner, lend their assistance to a striking labor organization by refusing to cross its picket line. Since employees who honor picket lines normally do not act formally as a group (*National Labor Relations Board* v. *International Rice Milling Co.,* 341 U. S. 665), and do not seek an immediate benefit for themselves, the conclusion of the court below that these factors remove the activity from the Act's pro-

tection affects almost every employee who refuses to cross a picket line. This holding sharply curtails not only the rights of employees but the power of labor organizations, preserved by Congress in the amended Act, "to bring pressure to bear on offending employers in primary labor disputes." *National Labor Relations Board* v. *Denver Building Trades Council,* 341 U. S. 675, 692. For the primary picket line—"the customary means of enlisting the support of employees" (*Electrical Workers* v. *National Labor Relations Board,* 341 U. S. 694, 703)—has meaning and efficacy precisely because workers approaching it, particularly members of the same or another labor organization, commonly understand it as an appeal for aid and solidarity and commonly respond by refusing to cross the line. In doing so, the employees make common cause with the striking union and become participants in its concerted activity. *Gardner-Denver Co.,* 58 NLRB 81; *Rockaway News Supply Co.,* 95 NLRB, No. 50, 28 LRRM 1314. To deny such participation the status of "concerted activities, for * * * mutual aid or protection" within the meaning of Section 7 is to hold that although Congress protected the fundamental right of labor organizations to engage in primary picketing, it withheld protection from the normal employee response which makes that right effective.

Far from justifying, or diminishing the importance of, the result reached below, the court's alter-

native holding—that the employees must be denied the protection of Section 7 because their collective bargaining agent was not participating in the strike and had not authorized, although it had not forbidden, their action—reads a drastic and unprecedented restriction into the Act. This holding overlooks the fact that the statute confers not only collective bargaining rights, which are collectivized by the selection of a bargaining agent, but also individual rights such as the right to "form, join, or assist labor organizations" and the right to engage in "concerted activities, for * * * other mutual aid or protection." Denial of the latter rights to employees who have selected a bargaining agent vests in the agent rights which Congress reserved to the employees themselves. Cf. *Elgin, J. & E. Ry.* v. *Burley,* 325 U. S. 711. It is of manifest importance to employees, labor organizations, and employers to know whether the fundamental right of employees to refuse to cross a picket line and otherwise to lend sympathetic support to labor organizations depends upon the sanction and authorization of their bargaining representative.

We believe, in sum, that the issues in this case are of great importance in defining the scope of the protections the Act affords. As the opinion of the court below makes clear, the principles upon which its decision rests are by no means confined to the case where employees refusing to cross a picket line work for the same employer

as the striking group. While even this situation is sufficiently common to warrant consideration by this Court (*National Labor Relations Board* v. *Montag Bros.*, 140 F. 2d 730 (C. A. 5), enforcing 51 NLRB 366; *New York Telephone Co.*, 89 NLRB 383; cf. *Gardner-Denver Co.*, 58 NLRB 81; *Pinaud, Inc.*, 51 NLRB 235; *Rock Hill Printing and Finishing Co.*, 29 NLRB 673, 692-697, enforced, 131 F. 2d 171 (C. A. 4)), the questions presented here—whether the employees "assisted" a labor organization, whether they engaged in "concerted activities," whether they sought "mutual aid or protection," and whether their action was unprotected because not sanctioned, although not disapproved, by their bargaining agent—would be the same if the employees had respected a picket line directed against an employer other than their own. See, *e.g.*, *Cyril de Cordova & Bro.*, 91 NLRB, No. 187, 26 LRRM 1628; *Rockaway News Supply Co.*, 95 NLRB, No. 50, 28 LRRM 1314.

We submit that the decision of these questions by the court below, conflicting in principle and result with decisions of other courts of appeals, inserts restrictions into Section 7 which Congress never intended.

1. As this Court recently observed, the efforts of striking workers to induce others not to cross their picket lines is "traditional and permissible in a primary strike." *National Labor Relations Board* v. *Denver Building Trades Council*, 341

U. S. 675, 687. Equally traditional, well-recognized, and permissible is the tendency of union workers to yield to such inducements. See *Printing Specialties and Paper Converters Union* v. *LeBaron,* 171 F. 2d, 331, 334 (C. A. 9), petition for certiorari dismissed, 336 U. S. 949; *National Labor Relations Board* v. *Service Trade Chauffeurs* (C. A. 2), decided July 31, 1951, slip op. 4, 5; Barbash, *Labor Unions in Action* (1948), p. 129. The refusal of employees to cross a picket line—the very action the picketers solicit to aid them in bringing pressure on their employer—constitutes "assistance" to the striking labor organization in the most literal and fundamental sense. This fact alone should have led the court below to enforce the Board's order, since the right to "assist" labor organizations is conferred by Section 7 independently of the right to engage in concerted activities, and its exercise is protected without regard to whether the "assistance" may also amount to "concerted activity."

The court below also erred, however, in holding that, because the employees acted individually and sought no immediate benefit from the employer for themselves, their refusals to cross the picket lines were not "concerted activities for * * * mutual aid or protection." To focus on whether the employees acted in concert vis-a-vis each other is to overlook the salient fact that in "refusing to cross the * * * picket line [the employees were]

making common cause and acting in concert with the [striking union]." *Rockaway News Supply Co., supra.* Since the activities are "concerted" in this sense, it is irrelevant, for the purposes of this issue, that the employees who refused to cross did not act in concert with each other.[9]

Nor does the fact that the employees had no immediate stake in the outcome of the striking

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[9] In *National Labor Relations Board* v. *International Rice Milling Co.*, 341 U. S. 665, this Court held that a union engaging in a primary strike and persuading employees of a neutral customer not to cross its picket line, had not violated Section 8 (b) (4) of the amended Act which forbids a labor organization "to induce or encourage the employees of any employer to engage in a strike or a concerted refusal in the course of their employment * * * to perform any services" where such inducement is directed toward certain proscribed objects. The opinion in that case states that the language of Section 8 (b) (4) "contemplates inducement or encouragement to some concert of action greater than is evidenced by the pickets' request to a driver of a single truck to discontinue a pending trip to a picketed mill." 341 U. S., at 671. But the conclusion that an individual employee refraining from crossing a picket line does not "engage in a strike or a concerted refusal" to work as contemplated by Section 8 (b) (4) does not alter the fact that such an employee assists the picketers, allies himself with them, and thereby engages in one of the broadly conceived "concerted activities" covered by Section 7. See the Board's memorandum in opposition to the petition for rehearing in the *International Rice Milling* case. Indeed, the amended Act makes it clear beyond doubt that Congress has recognized that assistance to a labor organization constitutes a "concerted" activity. Section 7, as amended, after declaring the right "to form, join, or *assist* labor organization," specifies the further right "to engage in *other* concerted activities" (Italics added). While this language gives more literal recognition to the reality we have stressed (the word "other" which we have italicized did not appear in the original Act), it was neither intended nor required to broaden the range of the "concerted activities" protected by the Act prior to its amendment. See H. Conf. Rep. No. 510, 80th Cong., 1st Sess., p. 38.

union's dispute warrant the conclusion that their activities were not designed for "mutual aid or protection" within the meaning of Section 7. As Judge Learned Hand said in *National Labor Relations Board* v. *Peter Cailler Kohler Co.*, 130 F. 2d 503, 505-506 (C. A. 2):

> * * * When all the other workmen in a shop make common cause with a fellow workman over his separate grievance, and go out on strike in his support, they engage in a "concerted activity" for "mutual aid or protection," although the aggrieved workman is the only one of them who has any immediate stake in the outcome. The rest know that by their action each one of them assures himself, in case his turn ever comes, of the support of the one whom they are all then helping; and the solidarity so established is "mutual aid" in the most literal sense, as nobody doubts. So too of those engaging in a "sympathetic strike," or secondary boycott; the immediate quarrel does not itself concern them, but by extending the number of those who will make the enemy of one the enemy of all, the power of each is vastly increased. It is one thing how far a community should allow such power to grow; but, whatever may be the proper place to check it, each separate extension is certainly a step in "mutual aid or protection." Cf. *Fort Wayne Corrugated Paper Co.* v. *National Labor Relations Board,* 7 Cir., 111 F. 2d 869, 873, 874. It is true that in the past courts often failed to recognize the interest

> which each might have in a solidarity so obtained (e.g. *Duplex Printing Press Co.* v. *Deering,* 254 U. S. 443, 471, 472, 474, 41 S. Ct. 172, 65 L. Ed. 349, 16 A.L.R. 196), but it seems to us that the act has put an end to this.

In the amended Act Congress, recognizing the extent to which employees seek "mutual aid or protection" through sympathetic action in disputes to which they are not immediate parties, decided to mark the boundary of permissible sympathetic action at secondary boycotts. It thereby continued intact the Wagner Act's protection of sympathetic action which, as in this case, is no more than a normal concomitant of a primary strike. It is clear, under the amended Act, as under the original Act, that the ITTU was entitled to seek the support of the employees involved in this case, seven of whom were members of ITTU, by picketing their employer's Chicago properties; it is equally clear that in granting such support the employees, all but one of whom were members of the picketing union,[10] were acting for "mutual aid or protection."

Taking a contrary, restricted view of "mutual aid or protection," ascribing an unrealistic mean-

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[10] While the employees' membership in the striking union makes their interest patent, the analysis outlined above demonstrates that their refusal to cross the picket line would have been protected under the Act even if their refusal had been motivated solely by reluctance to cross any picket line, even one of a union to which they did not belong. See, *Rockaway News Supply Co., supra; Cyril de Cordova & Bro., supra.*

ing to "concerted activities" and totally disregarding the right to "assist" labor organizations, the court below has reached a result in conflict with the uniform holdings of the Board and other courts of appeals which have consistently accorded the protection of Section 7 to employees who, by refusing to cross picket lines or by other lawful means, have lent sympathy or support to striking workers. *National Labor Relations Board* v. *Montag Bros.*, 140 F. 2d 730 (C. A. 5), enforcing 51 NLRB 366; *National Labor Relations Board* v. *J. G. Boswell Co.*, 136 F. 2d 585 (C. A. 9); *Rockaway News Supply Co.*, 95 NLRB, No. 50, 28 LRRM 1314; *Cyril de Cordova & Bro.*, 91 NLRB, No. 187, 26 LRRM 1628; *New York Telephone Co.*, 89 NLRB 383; *Gardner-Denver Co.*, 58 NLRB 81; *Pinaud, Inc.*, 51 NLRB 235; *Rock Hill Printing & Finishing Co.*, 29 NLRB 673, 692-697, enforced, 131 F. 2d 171 (C. A. 4); *Surpass Leather Co.*, 21 NLRB 1258, 1274-1275; cf. *Club Troika, Inc.*, 2 NLRB 90. Thus, in *National Labor Relations Board* v. *Montag Bros., supra,* without questioning the correctness of the Board's conclusion that an individual employee's refusal to cross a picket line is "concerted action [which] is lawful and is accorded full protection by the Act" (51 NLRB, at 372)[11] the court enforced a Board order based

[11] The quoted language, which is from the trial examiner's intermediate report, was adopted by the Board in its decision. 51 NLRB, at 366.

upon this conclusion.[12] That case, like this, involved a strike in one department of the employer's enterprise and refusals by employees of another department to cross a picket line. There, as here, the employees respecting the picket line had no personal stake in the immediate objectives of the strikers. And, in *National Labor Relations Board* v. *J. B. Boswell Co., supra,* an employee was held to be protected by Section 7 against discrimination for her supposed sympathy with and assistance to a union to which she did not belong. Unlike the employees here, the employee in *Boswell* was not a member of any union and was not even employed in the industry dealt with by the union she was thought to have assisted. Clearly, her stake in the union's activities was far more remote than the concern of the employees in this case with a union to which most of them belonged and which represented fellow-employees in the same enterprise.[13]

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[12] The Board had found that the reasons for the discrimination against the employees involved in *Montag* included other union activities antedating the refusals to cross a picket line. The Board concluded, however, that the picket line incident "was the consideration which influenced [the employer] in refusing to reinstate them." 51 NLRB, at 373. It seems clear, therefore, that if it had rejected the Board's view that the refusals to cross the picket line were protected, the court would not have held simply, upon "careful consideration of all the evidence * * *, that there was substantial evidence to warrant the Board in its findings and conclusions." 140 F. 2d, at 731.

[13] It is noteworthy that the court in the *Boswell* case (136 F. 2d at 595) cited and quoted from an earlier holding of the court below, in *Fort Wayne Corrugated Paper Co.* v. *National Labor Relations Board,* 111 F. 2d 869, 874,

2. The need for review is enhanced, we submit, by the court's alternative ground for its decision. For the novel holding that, even if their refusals to cross the picket lines would otherwise have been protected, the employees in this case must be denied protection because their bargaining agent had not directed or expressly authorized their action distorts the plain language and purpose of the Act.

Nothing in the Act supports the view that employees represented by a bargaining agent lose the protection of the statute when they engage in sympathetic activities, unrelated to collective bargaining with their employer on their own behalf, unless their activities command the agent's explicit consent. The Act confers rights, not upon labor organizations as such, but upon "employees." See *National Labor Relations Board* v. *Schwartz*, 146 F. 2d

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that "the employee's right to join and participate in union activities outside his own employment is clear." We believe that the present decision marks a departure, not only from precedents of other courts, but from the court's own decisions in the *Fort Wayne* case and in *Rapid Roller Co.* v. *National Labor Relations Board*, 126 F. 2d 452. In *Fort Wayne*, the court held that an employer had violated the Act when he discharged an employee whose activities in a union representing employees of the employer's customer led to resentment and withdrawal of patronage by the customer. In *Rapid Roller*, the court found an unlawful discrimination in the discharge of employees who, despite their non-membership in the striking union, demonstrated "their sympathy for the union" by refusing to act as strikebreakers. In neither case did the court deem it material, as it does here, that the employees involved sought no immediate personal advantage from their employers as a result of the activities with which they sympathized or assisted. Nor did the court find it fatal to the protection accorded in the *Rapid Roller* case that the employees refusing to work as strikebreakers did not decide as a group on their position with respect to the strike.

773, 774 (C. A. 5); *Joanna Cotton Mills Co.* v. *National Labor Relations Board,* 176 F. 2d 749, 752 (C. A. 4); *National Labor Relations Board* v. *Clausen,* 188 F. 2d 439, 443-444 (C. A. 3). While Section 9 (a) provides that an agent chosen by the majority shall be the exclusive representative of all "for the purposes of collective bargaining in respect of rates of pay, wages, hours of employment, or other conditions of employment," this provision carries no suggestion that the existence of a representative so collectivizes all of the employees' rights under Section 7 as to make each and every one of them exercisable only through, or with the express consent of, the representative. Section 9 (a) leaves intact the declaration of Section 7 that employees have, in addition to the right "to bargain collectively through representatives of their own choosing," the further right "to engage in concerted activities, for the purpose of collective bargaining *or other mutual aid or protection*" (italics added). Indeed, even as to collective bargaining itself, the Act preserves an important area to the autonomous action of employees in the adjustment of grievances (proviso to Sec. 9 (a) of the Act.)

Of course, the exclusive status of a collective bargaining representative would be impaired if individual employees were permitted to usurp its statutory function of negotiating with the employer. See *J. I. Case Co.* v. *National Labor Rela-*

tions Board, 321 U. S. 332. It was for this reason that a minority group of "wildcat" strikers was held unprotected in *National Labor Relations Board* v. *Draper Corp.,* 145 F. 2d 199 (C. A. 4), when it struck "for the purpose of influencing the bargaining being carried on by the chosen representatives of all the employees." *Id.,* at 203. But in the wholly different situation presented here the reliance of the court below on the *Draper* decision is misplaced.[14] The employees in this case, in refusing to cross the picket lines, made no demands upon the respondent for themselves and took no action which in any way impinged on the exclusive right of their bargaining agent to treat with their employer for them As the Board observed (B. A. 11), "the concerted activity engaged in by the demotees bore no relationship, other than mere temporal coincidence, to the then current bargaining negotiations between the CTTU, their representative, and the Respondent." This accident of "temporal coincidence" does not alter the fact that the employees were not attempting to usurp or

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[14] Expressly limiting its decision, in language which indicates its inapplicability here, the court in *Draper* wrote (145 F. 2d, at 205):

> We do not mean to say, of course, that a strike can be called only by a bargaining union, or that less than a majority of employees will not be protected when they go on strike in protection of their rights. See *Firth Carpet Co.* v. *N. L. R. B.,* 2 Cir., 129 F. 2d 633. What we do mean to say is that minorities who engage in "wild cat" strikes, *in violation of rights established by the collective bargaining statute,* can find nothing in that statute which protects them from discharge. [Italics added.]

affect the function of their representative to bargain exclusively for them.

Contrary to the view of the court below (R. A. 48), it by no means follows that because the employees could not act independently of their representative to seek benefits for themselves, they could not, without their agent's express approval, lend their sympathetic support to fellow workers engaged in a dispute which did not concern their own wages, hours or working conditions. Even if the employees involved in this case had been joined by all of the employees in the unit in refusing to cross the ITTU picket line, their action still would have left the statutory right of their representative to bargain for them and conclude an effective contract undiminished, unquestioned and unimpeded. The court's error, we submit, lay in mistakenly attaching significance to the fact that a widespread refusal of the Chicago employees to cross the picket line would have effected a work stoppage, just as would have occurred if they had struck for collective bargaining objectives. The important fact is that the injury to respondent "due to [the] habitual unwillingness to cross picket lines," was "merely incidental to a traditionally lawful primary strike" (*National Labor Relations Board* v. *Service Trade Chaffeurs* (C.A. 2) decided July 31, 1951, slip op. 4, 5) which had no connection with the collective bargaining relationship between re-

spondent and CTTU, the representative of the employees involved here. Unless it be held that all rights conferred upon employees by Section 7 are collectivized by the selection of a bargaining agent, a holding at war with the basic philosophy of the Act (cf. *Elgin, J. & E. Ry.* v. *Burley,* 325 U. S. 711, 733-734, 738, 744), the similarity in impact upon the employer is immaterial so long as the employees refrain from interfering with or usurping the role of the bargaining agent.

CONCLUSION

The issues presented are of substantial importance in the administration of the Act, and the decision below conflicts in principle and result with the decisions of other courts of appeals. It is respectfully submitted that this petition for a writ of certiorari should be granted.

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AUGUST, 1951.

APPENDIX

The pertinent provisions of the original National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, 29 U. S. C., Secs. 151, *et seq.*) are as follows:

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

* * * * *

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization * * *.

* * * * *

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of

employment: *Provided,* That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

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